



which must be in the amount currently required by the FHA but not less than \$300,000-;

~~(e)(d)~~ an applicant which is governed by one of the regulatory agencies defined herein, must submit its most recent regulatory agency report, which must indicate a positive return on average assets, and (based on generally accepted accounting principles (GAAP)) indicate a total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of the regulatory agency and must have and maintain a minimum net worth according to generally accepted accounting principles (GAAP) of \$1 million. An applicant not governed by a regulatory agency defined herein, must submit its the applicant's most recent audited financial statements and current financial statements which have been prepared within 60 days of submission. Current financial statements shall be comprised of a balance sheet, year-to-date income statement, and a statement of change covering at least a the immediately preceding six-month period. Current financial statements which must, based on generally accepted accounting principles (GAAP), indicate a positive return on average assets, based on generally accepted accounting principles (GAAP), and current financial statements must indicate total capital as a percentage of average assets of at least 6%, and must have and maintain a minimum net worth according to generally accepted accounting principles (GAAP) of \$1 million \$1,000,000-;

~~(f)(e)~~ evidence of current corporate and ownership structure demonstrating more than one year of existence. This existence of the business entity for at least one year prior to the date of application (also applies applicable to existing approved lending institutions which are lenders restructured by the institution's lender's regulatory agency or corporate through reorganization-); and

(f) designation of the office or offices within the state of Montana at which residential loans using board programs will be made, including the address, telephone number, facsimile number, and e-mail address of each office.

(3) The board will determine whether or not an applicant is qualified approved under the terms and conditions of 90-6-103, 90-6-104, 90-6-106 and 90-6-108, Title 90, chapter 6, MCA, the applicable trust indenture, and the rules then in effect. Approved and qualified applicants A lender approved under this section will be notified and advised of the conditions of their its approval.

(4) The board will restrict the financial returns and benefits of the funds provided to qualified and approved lending institutions as provided in the applicable trust indentures under which its programs are financed.

(5) No qualified lending institutions may enter into any written commitment to make mortgage loans to be purchased or financed by the board with a builder, developer or real estate agent or broker unless the board first determines that, due to economic and other conditions prevailing in the area involved, such commitments are made necessary or desirable to provide decent, safe and sanitary housing which is within the capabilities of lower income persons and families.

(6)(4) Each year or as may be requested by the board, the qualified and an approved lending institutions lender participating in the board's bond programs shall submit:

(a) file audited financial statements or equivalent regulatory agency reports. The financial statements shall exhibit total capital as a percentage of average assets

of at least 6%. If the qualified and approved lending institution's capital to average assets ratio is below 6%, the institution must meet the capital requirements of its regulatory agency or demonstrate, with current financial statements, an increasing ratio of capital to average assets. demonstrating that the financial standards described in (2)(d) continue to be met;

(b) an updated list of the officers required in (2)(a);

(c) an updated list of the personnel required under (2)(b); and

(d) an updated list of the offices required under (2)(f).

~~(7)(5) Any An applicant which fails failing to meet the requirements set forth in this regulation, will not be allowed to~~ of this rule may not submit a new application to qualify as an approved lending institution for approval as a lender for a minimum period of 180 days from the date of its previous application.

(6) The relationship between the board and an approved lender is contractual in nature. The approved lender must comply with the provisions of the board's Mortgage Purchase and Servicing Guide as the same may be amended from time to time. The board may terminate a lender's approval to make board loans at any time without cause and without a termination fee. The board will terminate a lender's approval to make board loans for repeated or material failure of the lender to comply with the provisions of the board's Mortgage Purchase and Servicing Guide.

AUTH: 90-6-104, 90-6-106, 90-6-108, MCA

IMP: 90-6-106, 90-6-108, 90-6-110, MCA

8.111.305A QUALIFIED APPROVED LOAN SERVICERS (1) Any institution A public or private entity which has, as its function, the servicing of mortgage loans secured by residential real estate, and maintains an office in the state, may apply in writing to be designated as a qualified and an approved servicer for board of housing mortgage loans ("applicant").

(2) All applications shall be in writing and include the following:

(a) designation of the office(s) in the state of Montana for loan servicing;

(b) evidence of current corporate and ownership structure demonstrating more than one year of existence of the business entity for at least one year prior to the date of application (also applicable to an existing approved servicer restructured by the servicer's regulatory agency or through reorganization);

(c) a list of the applicant's principal officers, addresses and phone numbers, and designation of the officers authorized to execute legal contracts, agreements or and other documents;

(d) a listing list of the applicant's personnel principally involved with servicing mortgage loans, their the office location address, phone number, and description of their qualifications, and the position in the applicant's organizational structure for each person;

(e) a certificate evidence of errors and omissions insurance coverage and/or and fidelity insurance coverage in a minimum amount as is required by the program documents for each bond issue in which the loan servicer participates, each of which must be in the amount required by the FHA but not less than \$300,000;

(f) an applicant which is governed by one of the regulatory agencies defined herein, must submit its most recent regulatory agency report which must indicate a

~~positive return on average assets, and (based on generally accepted accounting principles (GAAP)) must indicate a total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of their regulatory agency and must have and maintain a minimum net worth according to generally accepted accounting principles (GAAP) of \$1 million. An applicant not governed by a regulatory agency defined herein, must submit its the applicant's most recent audited financial statements and current financial statements which have been prepared within 60 days of submission. Current financial statements shall be comprised of a balance sheet, year-to-date income statement, and a statement of change covering at least a the immediately preceding six-month period. Current financial statements which must indicate, based on generally accepted accounting principles (GAAP), a positive return on average assets, based on generally accepted accounting principles (GAAP), and current financial statements and must indicate total capital as a percentage of average assets of at least 6%, and must have and maintain a minimum net worth according to generally accepted accounting principles (GAAP) of \$1 million. \$1,000,000; and~~

~~(g) evidence that the applicant is an approved servicer of the FHA/VA FHA, VA, RD, or a private mortgage insurer approved servicer by the board.~~

~~(2)(3) A qualified and approved servicing institution previously approved servicer that is restructured by the institution's servicer's regulatory agency; or through corporate reorganization or ownership restructure shall must reapply for designation as an approved and qualified servicer. The restructured institution servicer shall be is exempt from the one year corporate ownership requirement set forth requirements in (1)(2)(b), above, - providing evidence of one year of existence, and the requirement for a financial statement covering a six-month period as set forth in (1)(2)(f), above. - submittal of financial statements for the preceding six-month period The but shall submit financial statements required shall cover for the period from the date the servicer was restructured or reorganized through the date of application.~~

~~(3)(4) The application will be reviewed by the board's staff, and the institution will be notified in writing of the status of the application. The board will determine whether or not an applicant is approved under the terms and conditions of Title 90, chapter 6, MCA, the applicable trust indenture, and the rules then in effect. A servicer approved under this section will be notified and advised of the condition of its approval.~~

~~(4) The approved and qualified servicer for mortgage loans shall continue to meet the following requirements to retain the status of approved and qualified servicer:~~

~~(a) maintain an office in the state of Montana for loan servicing;~~

~~(b) provide the board with a certificate of errors and omissions insurance coverage in a minimum amount as is required by the program documents for each bond issue in which the loan servicer participates;~~

~~(c)(5) each Each year or as may be requested by the board, an approved servicer shall submit:~~

~~(a) file audited financial statements or equivalent regulatory agency reports. The financial reports shall exhibit total capital as a percentage of average assets of at least 6%. If the institution's capital to average assets ratio is below 6%, the~~

~~institution must meet the capital requirements of its regulatory agency or demonstrate, with current financial statements, an increasing ratio of capital to average assets. demonstrating that the financial standards described in (2)(f) continue to be met;~~

~~(b) an updated list of the office(s) required in (2)(a);~~

~~(c) an updated list of the officers required under (2)(c);~~

~~(d) an updated list of the personnel required under (2)(d); and~~

~~(e) evidence demonstrating that the servicer has internal controls providing for security of board funds and confidentiality of information related to board mortgagors, which evidence can be the servicer's most recent Statement of Auditing Standard 70 Report or equivalent regulatory agency report.~~

~~(5)(6) Any An applicant which fails failing to meet the requirements set forth in this regulation, will not be allowed to of this rule may not submit a new application to qualify for approval as a loan servicer for a minimum period of 180 days from the date of its previous application.~~

~~(7) An approved servicer must maintain at least one office within the state where a board borrower can make payments, obtain relevant information about the borrower's loan, and obtain resolution of servicing issues regarding the borrower's loan. If the servicer elects to service board loans outside of the state, the servicer must either have the capability of providing loan documents requested for audit purposes by electronic means or reimburse the board for the cost of its auditors to travel to and conduct an audit at the out-of-state servicing site.~~

~~(8) The relationship between the board and an approved servicer is contractual in nature. The approved servicer must comply with the provisions of the board's Mortgage Purchase and Servicing Guide as the same may be amended from time to time. The board may terminate a servicer's approval to make board loans at any time without cause and without a termination fee. The board will terminate a servicer's approval to make board loans for repeated or material failure of the servicer to comply with the provisions of the board's Mortgage Purchase and Servicing Guide.~~

AUTH: 90-6-104, 90-6-106, MCA

IMP: 90-6-108, MCA

REASON: The Montana Board of Housing is amending these rules to delete outdated language, to clarify requirements for approval and continuation as approved lender and servicers under the board's homeownership program, and to emphasize that the relationship between the board and an approved lender or servicer is contractual and can be terminated without cause.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Nancy Leifer, Homeownership Program Manager, Montana Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406) 841-2849; fax (406) 841-2841; or e-mail nleifer@mt.gov, and must be received no later than 5:00 p.m., March 17, 2008.

5. Nancy Leifer, Homeownership Program Manager, Board of Housing, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528, by fax to (406) 841-2841, by e-mail to dihall@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

MONTANA BOARD OF HOUSING  
J. P. Crowley, Chair

/s/ KELLY A. CASILLAS  
KELLY A. CASILLAS  
Rule Reviewer

/s/ ANTHONY J. PREITE  
ANTHONY J. PREITE  
Director  
Department of Commerce

Certified to the Secretary of State February 4, 2008.